

RECORDING REQUESTED BY:  
Don and Lonne Carr  
1001 Dry Creek Road  
Napa, California 94558

WHEN RECORDED, MAIL TO:

Barbara J. Cook, P.E. Chief  
Department of Toxic Substances Control  
Northern California –  
Coastal Cleanup Operations Branch  
700 Heinz Avenue  
Berkeley, California 94710-2737



CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
**DOC- 2007-0217233-00**

Friday, JUL 27, 2007 15:57:52  
FRE \$0.00

Ttl Pd \$0.00

Nbr-0003799484  
lrc/R9/1-16

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## COVENANT TO RESTRICT USE OF PROPERTY

### ENVIRONMENTAL RESTRICTION

Re: *County of Contra Costa APN 085-280-009, Former Greif Bros. Facility*

This Covenant and Agreement ("Covenant") is made by and between Don and Lonne Carr (the "Covenantor"), the current owner of property situated in Pittsburg, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 37 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Willow Pass Road and the Mirant Delta LLC power plant to the north, railroad tracks to the south, and further to the south, east and west by residential neighborhoods, County of Contra Costa, State of California. The Property is also generally described as Contra Costa County Assessor's Parcel No. 085-280-009.

1.02. Sonoco Products Company ("Sonoco") is remediating the Property under the supervision and authority of the Department. The Property is to be remediated pursuant to a Removal Action Workplan developed under the Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including volatile organic compounds, remain in the groundwater in and under portions of the Property, the Removal Action Workplan provides that a Covenant be required as part of the site remediation. The Department circulated the Removal Action Workplan, together with a Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq for public review and comment from October 19, 2006 to November 20, 2006. The groundwater remedial action includes continued monitoring of the natural attenuation process through annual sampling of the existing groundwater monitoring well network ("Monitoring Wells"). The locations of the Monitoring Wells are shown on Exhibit "B".

1.03. The possible volatilization and upward movement of volatile organic compounds from groundwater into the existing or future buildings on the Property is a potential human exposure pathway. As detailed in the August 2004 Baseline Human Health Risk Assessment, prepared by Environmental Resources Management and approved by the Department on November 5, 2004, the estimated total excess lifetime

cancer risk associated with this potential exposure pathway under a residential land use scenario exceeded the Department's benchmark of  $1 \times 10^{-6}$ . The Human Health Risk Assessment, however, did show that the risk to human health under the current commercial land use scenario is less than  $1 \times 10^{-6}$ . Groundwater at the Property is found 5 to 12 feet below ground surface. Contaminants in the groundwater include trichloroethylene ("TCE") at concentrations between 1.0 and 2,800 parts per billion ("ppb"), cis-1,2-DCE at concentrations between 86 and 430 ppb and 1,1-DCE at concentrations between 4.8 and 16 ppb. The California drinking water standards ("Maximum Contaminant Levels" or "MCLs") are 5 ppb for TCE, and 6 ppb for cis-1,2-DCE and 1,1-DCE. The Department concludes that the groundwater presents an unacceptable threat to human health and safety under a residential land use scenario.

## ARTICLE II

### DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

### ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number ("APN") noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant. If an Operation and Maintenance Agreement (or some other agreement) exist between the Department and a third party, for the Property that encompasses a mechanism for cost recovery of costs associated with the administration of this Covenant, the Department will first pursue its costs through the mechanism established in that agreement.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.

- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.
- (c) Extraction of groundwater for purposes other than site remediation or construction dewatering.

4.03. Groundwater Management. Extraction of groundwater for purposes of remediation or construction dewatering shall be performed in accordance with procedures approved by the Department.

4.04. Non-Interference with Groundwater Monitoring Well Network. Owner agrees:

- (a) The Owner shall preserve the integrity and physical accessibility of the groundwater Monitoring Well Network.
- (b) The Monitoring Wells shall not be altered without written approval by the Department.
- (c) The Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Monitoring Wells and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any person falling within the definition of Owner or Occupant shall satisfy this requirement on behalf of all persons falling within the definition of Owner and Occupant.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Removal Action Workplan shall have reasonable right of entry and access to the Property for the purpose of implementing the Remedial Action Workplan activities until the Department determines that no further Operation and Maintenance is required.

## ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

## ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:        Don and Lonne Carr  
                      1001 Dry Creek Road  
                      Napa, CA 94558

and

To Department: Barbara J. Cook, P.E. Chief  
                      Department of Toxic Substances Control



Northern California– Coastal Cleanup Operations  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710-2737

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15<sup>th</sup> of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violations: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violations cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

Don Carr

6-13-07

Don Carr

Date

Lonnie Carr  
Lonnie Carr

6-13-07  
Date:

Department of Toxic Substances Control

By: Barbara Cook  
Title: Barbara Cook, Regional Branch Chief

7-20-2007  
Date:

STATE OF CALIFORNIA

COUNTY OF Napa

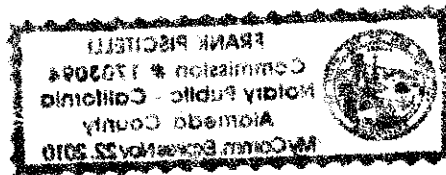
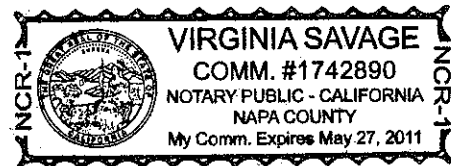
On this 13<sup>th</sup> day of June, in the year 2007,

before me VIRGINIA SAVAGE, Notary Public, personally appeared

<sup>Carr</sup>  
**Don and Lonne Carr** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~ /are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Virginia Savage SEAL



STATE OF CALIFORNIA  
COUNTY OF Contra Costa

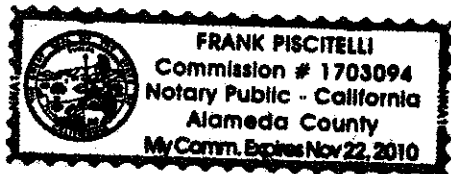
On this 20th day of July, in the year 2007,  
before me FRANK PISCITELLI, Notary Public, personally appeared

**Barbara Cook, Regional Branch Chief, Department of Toxic Substances Control**

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Frank Piscitelli SEAL



## **EXHIBIT "A"**

### **(City of Pittsburg)**

#### **PARCEL ONE:**

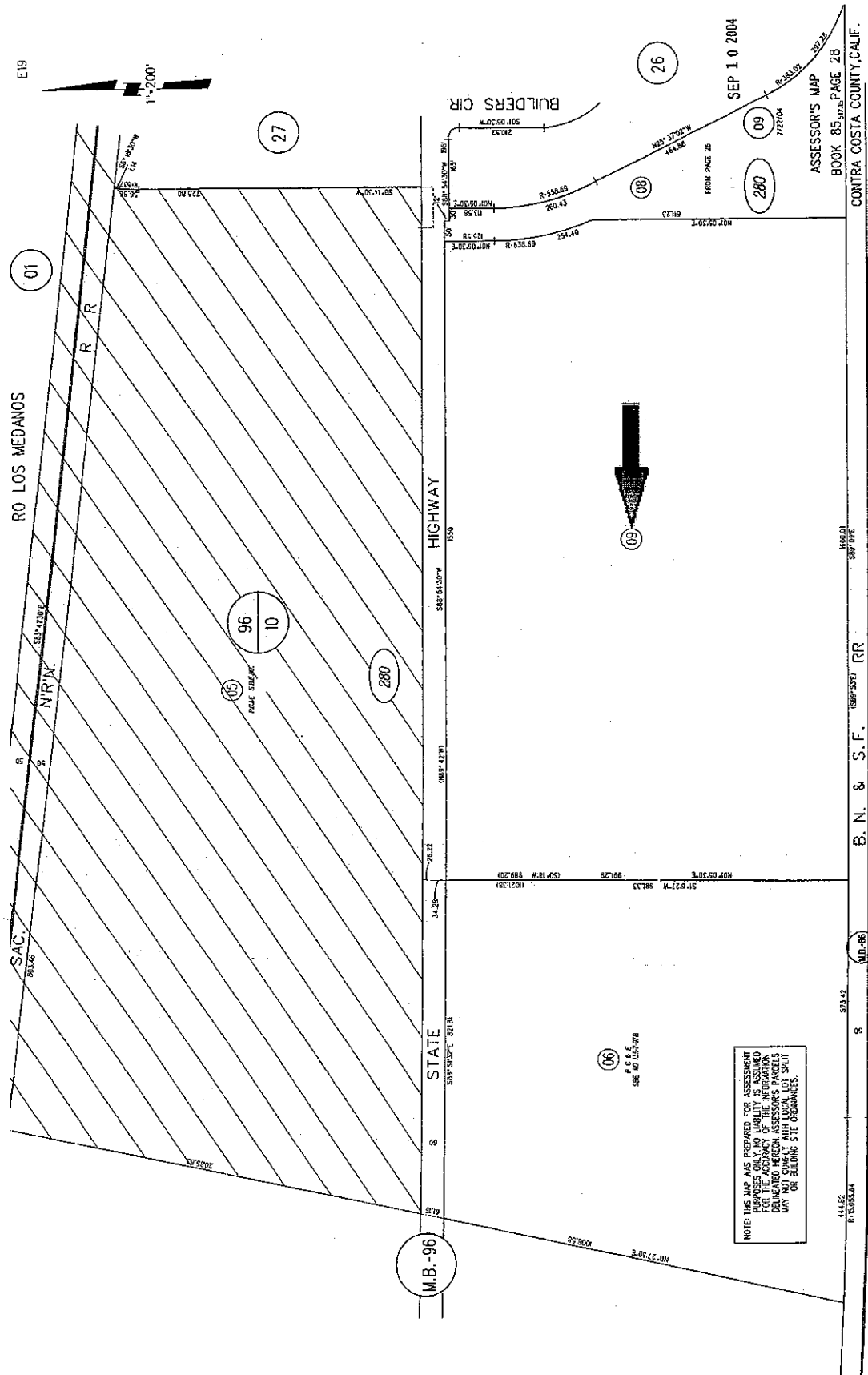
Parcel 'B' of that "Parcel Map Waiver for a Lot Split PMW 03-12" which filed January 28, 2004, as Instrument No. 2004-028021 in the Office of the Recorder of Contra Costa County, more particularly described as follows:

Beginning at the Northwest corner of said Parcel 'B' thence South 88°54'30" East, 1,550.00 feet; thence South 01°05'30" West, 125.58 feet; thence along the arc of a tangent curve to the left with a radius of 638.69 feet through a central angle of 22°49'19" and an arc length of 254.40 feet; thence South 01°05'30" West, 611.23 feet; thence North 89°09'00" West, 1,600.01 feet; thence North 01°05'30" East, 991.29 feet to the point of beginning.

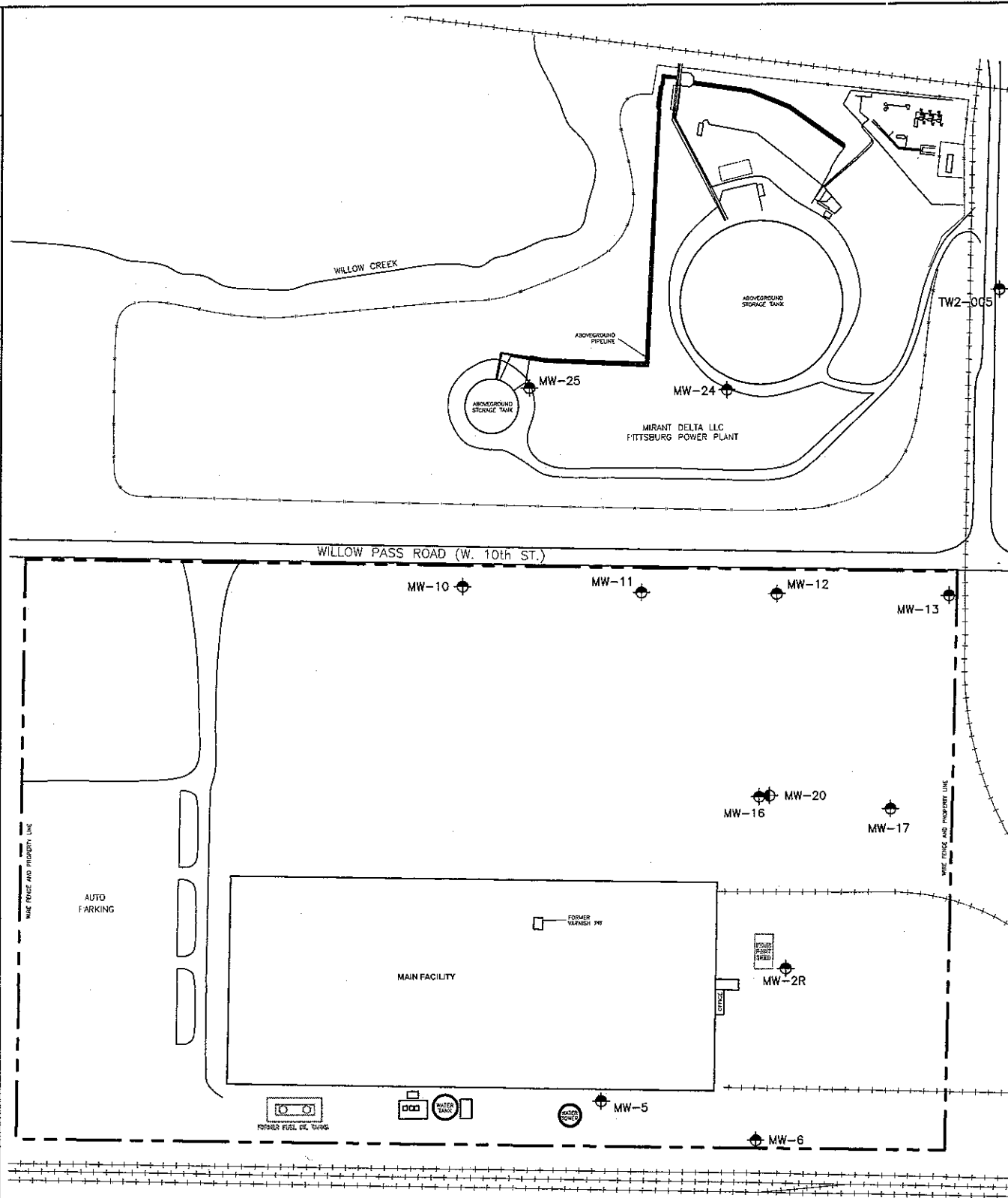
#### **PARCEL TWO:**

An easement for a railroad spur track across an as yet undetermined location, as granted in the Grant of Railway Spur Track Easement from Empire Commerce Center, LLC, a California limited liability company, which recorded March 10, 2006, as Instrument No. 2006-074032, Official Records of Contra Costa County.



Assessor's Parcel Number    085-280-009

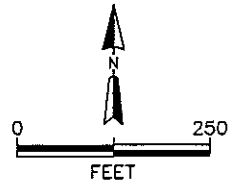


CAD File: G:\20637\44\2063744-01.dwg  
 Drawn By: J. Estrada  
 Date: 02/01/07  
 Project No. 20637.44



**LEGEND**

-  Monitoring Well. A Sand Zone
-  Monitoring Well. B Sand Zone



*Monitoring Well Locations Map  
 Former Greif Bros. Facility  
 Pittsburg, California*

## EXHIBIT B

### Monitoring Well Locations

End of Document

